**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 2054/2005

ARJUN SINGH
v
BALRAM VYAS

Date of Judgment: 14th September, 2006

Hon'ble Mr. Justice R. S. Chauhan

Mr. R.P. Garg , for the appellant.
Mr. Ajeet Singh for the respondent.

By Court:

The appellant has challenged the order dated 10.6.05 passed by the Addl. District Judge No. 4, Kota by which he granted a temporary injunction in favour of the plaintiff-respondent.

The brief facts of the case are that in April, 2005, the plaintiff-respondent had filed a suit for specific performance interalia, on the ground that on 1.9.2000 the plaintiff-respondent and the appellant had entered into an agreement to sell plot No. B-211, Indira Vihar Housing Colony, Kota for a consideration of Rs. 8,75,000/-. The plaintiff further claimed that he paid Rs. 4,50,000/- by way of sale consideration and it

was also agreed that Rs. 2 lacs will be paid within 35 days and the remaining amount shall be paid by 20.11.2000. He further alleged that upto 11.10.2000 he had paid a sum of Rs. 6,50,000/- for the said plot. He had sought extension of time for the payment of the rest of the amount which he was willing to pay and he also requested the defendant to execute the sale deed. Alongwith the said suit the plaintiff filed an application under Order 39 Rule 1 and 2 C.P.C.

In his written statement, the appellant pleaded that time was of essence according to the agreement to sell. Since the plaintiff did not pay the entire amount by the stipulated date, the amount of Rs. 6,50,000/- was forfeited by the defendant. Furthermore, he contended that a notice was sent by him to the plaintiff on 27.1.03. However, despite the service of the said notice, the plaintiff did not make the payment of the remaining amount. However, after hearing both the parties, vide order dated 10.6.05, the learned Court restrained the defendant from transferring the plot during the pendency of the proceedings. Hence this appeal before this court.

Mr. R.P. Garg, the learned counsel for the appellant, has vehemently argued that since the plaintiff did not pay the remaining consideration amount to the appellant, he does not have the right to claim specific performance of the contract. Infact, the amount so deposited by the plaintiff has been forfeited by the defendant. According to the learned counsel time was of essence in implementation of the contract. However, the plaintiff has not implemented his part of the contract within the stipulated period.

On the other hand, Mr. Ajeet Singh, the learned counsel for the respondent, has argued that time is not of the essence as there is no stipulation in the contract. Moreover, the right to forfeit the amount, already paid to the defendant, has not been given to the defendant in the agreement to sell. He further contends that even today the plaintiff is willing to pay the rest of the amount but the defendant is refusing to accept the same.

We have heard both the learned counsels for the parties and have perused the impugned order.

When this Court had asked Mr. Garg to submit a copy of the agreement to sell so as to prove that time was the essence, he failed to do so. Generally, in agreement to sell the time for the payment of the consideration amount is not critical but is flexible. Therefore, we are unable to agree with the learned counsel for the appellant that time is of essence in such a contract, specially when the agreement has not been placed before us.

Since the plaintiff has already paid Rs. 6,50,000/- - a fact admitted by the appellant and since the plaintiff is willing to make the payment of rest of the consideration amount, he is certainly entitled to have a temporary injunction in his favour by the Court. After all, in case of specific performance the property in dispute has to be protected. Therefore, this Court is not willing to interfere with the impugned order dated 10.6.05.

In the result, there is no force in this appeal and it is hereby dismissed. But as the case has been pending before the trial court for the last six years, we deem it proper to direct the trial court to take evidence on day-to-day basis and to complete the trial within a period of six months from the date of

receipt of the certified copy of this order. There is no order as to costs.

(R.S. CHAUHAN) J.

MRG.